BENEFITS EXPRESS SM

#32

April 3, 1999

Donald V. Hammond
Fiscal Assistant Secretary
U.S. Department of Treasury
Room 2112
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Advance Notice of Proposed Rulemaking (ANPRM)
RIN 1505-AA74; 31 CFR Chapter II
Possible Regulation Regarding Access to Accounts at Financial Institutions through Payment Service Providers

Dear Mr. Hammond:

Benefits Express, LLC (Benefits Express) is a non-depository payment service provider of a nationally available direct deposit service known as Direct Deposit Plus^{SM} (DDP). We submit this letter on our own behalf and on behalf of the thousands of previously "unbanked" individuals now receiving direct deposit through DDP.

Benefits Express appreciates this opportunity to comment on the ANPRM and assist the Service in formulating proposed rulemaking regulating payment service providers. We support Treasury's Electronic Transfer Account (*ETA*^{SM}) as a viable tool to promote the electronic funds transfer (EFT) requirement of the Debt Collection Improvement Act of 1996 (commonly known as EFT 99). Our goal is to convey (i) the attributes of the DDP account; (ii) the success of the DDP program in converting the unbanked to EFT recipients and (iii) the contributing role of the payment service provider in supporting EFT 99 implementation consistent with established Treasury principles.

<u>The DDP Account</u>
The DDP account differs significantly from the basic checking or savings accounts offered by neighborhood community banks. The DDP customer has no signature authority over the DDP account and no responsibility to manage the account. With the DDP account, the customer bears no risk of added charges occasioned by minimum balance requirements, bounced checks, stop payments and the like.

Customers may enroll in the DDP program at hundreds of participating non-bank point-of-sale (POS) outlets nationwide. Customers access disbursements of their funds by check (DDP Check) at their place of enrollment. To enroll, customers complete and sign a DDP Enrollment Application and Disclosure Agreement[1] at the POS outlet they choose. The POS then enters the customer information into the DDP software for

[1] See copy of DDP Enrollment Application and Disclosure Agreement contained in Exhibit "A".

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upload to the participating financial institution. Once received, the financial institution establishes a federally-insured DDP account in that customer's name. The DDP account can receive deposits from both private and governmental sources.

Upon enrollment, the DDP customer selects the option of receiving a full disbursement of the deposits immediately as they are received or to receive partial disbursements as requested. The DDP customer may obtain their funds either through the POS at which they are enrolled or at any participating DDP outlet. Upon receipt of an acknowledgement of deposit, the DDP software enables the POS to print an authorized DDP Check payable to the customer. The POS is not the signatory on the DDP Check and cannot alter the check in any way. The POS delivers the DDP Check to the customer upon obtaining proper proof of identification. Each DDP Check contains an accompanying Statement of Activity that reflects deposits and charges to the customer's account since the previous disbursement.[2]

Customers selecting the "Full Disbursement" option receive an immediate payment for their full deposit. "Demand Disbursement" customers receive an authorized disbursement upon their request in the amount so specified. In either case, Benefits Express deducts from each check a flat $2.95 per-disbursement fee. Representative payees can access deposits for multiple beneficiaries in a single disbursement. The customer pays <u>no</u> enrollment fee or monthly charge. The POS may charge a check cashing fee to negotiate the check or direct Benefits Express to deduct an additional per-disbursement charge ("POS Fee") from each check. In many instances, the POS reduces its normal check cashing fee to cover the Benefits Express charge. Benefits Express provides toll-free telephone support to all DDP accountholders.

The federal payments of recipients who enroll in the program are deposited into a federally insured account of the recipient at the participating financial institution. Upon authorization, the funds are transferred to a central account for disbursement to the named-payee. In the case of "Full Disbursement" customers, this process is naturally instantaneous. The recipient may cash the check at the disbursing POS outlet or elsewhere. Experience tells us that most recipients do cash their DDP Checks where they pick them up.

<u>Converting the Unbanked</u>
DDP targets the over 10 million Americans without bank relationships. According to Treasury's own EFT demographic study, the unbanked conduct their financial business on a "pay-as-you-go" basis, taking their benefit checks to neighborhood outlets such as grocery stores, check cashing outlets and other retail stores where they pay bills, receive cash or obtain money orders. Recent bank mergers have spurred the exodus of many bank branches from many neighborhoods. Replacing the banks, retail outlets have installed ATM machines subjecting the user to increasing disbursement

[2] <u>See</u> copy of sample DDP Check contained in Exhibit "B".

surcharges. These unbanked individuals have offered many and varied reasons in support of their choice not to use a bank: a lack of money; a lack of need; high bank/ATM fees; bad credit history; distrust of banks, to name but a few.[3] The Treasury study further revealed "that most Federal benefit recipients who receive their payments by check do so because they like seeing the security of a tangible payment, and they want to be certain that there are no problems with the payment delivery or amount."[4]

The DDP program delivers direct deposit by issuing check payments to recipients through each of the above-enumerated non-banking outlets that presently serve the unbanked. In a Federal Reserve Bank study, more than 22 percent of non-banking households reported that they did not like to deal with a bank.[5] Moreover, our own informal survey conducted at select DDP outlets revealed that customers appreciate the DDP program, because it allows them to receive direct deposit in a manner most comfortable and accustomed to them: by check without altering their financial habits.[6]

Payment Service Providers' Role

Payment service providers support their partner financial institutions by performing the key roles of marketer and delivery agent. Often through alliances with industry partners, they effectively reach the nationwide pool of unbanked EFT candidates. Equally important, with a vested financial stake in the success of EFT 99, the payment service provider must properly service the new EFT convert so that they do not revert back to the familiar paper check. In a recent New York Times article, Richard A. Oppel, Jr. noted that "despite various state "lifeline" laws requiring banks to offer low-cost accounts to anybody, few poor people take advantage of them."[7] He further adds that, "in a study last year, [the New York Public Interest Research Group] found that a third of bank employees did not mention low-cost options when customers asked about checking accounts."[8] The results are in and they are clear. Payment service providers enable banks to attract and service a nationwide EFT recipient base. For the banks, this transaction source generates fee-base income and cost savings through greater efficiencies of scale.

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[3] See Mandatory EFT Demographic Study, p. 4, updated 9/17/97 (www.fms.treas.gov/eft/demogra.html).

[4] Ibid.

[5] See Author unknown, "The unbanked: Why – and why they may need to change," *Bank Rate Monitor*, dated 1/2/98 (www.bankrate.com/brm/news/bank/19980102a.asp).

[6] See copy of DDP Survey contained in Exhibit "C".

[7] See Richard A. Oppel, Jr., "The Stepchildren of Banking, Efforts to Serve Low-Income Areas Appear to Sputter," *The New York Times*, dated 3/26/99 (contained in Exhibit "D").

[8] Ibid.

In testimony dated March 2, 1999 before the House Subcommittee on General Oversight and Investigations, you outlined these four principles guiding Treasury's implementation of EFT '99:

- The transition from a paper-based system to an electronic transfer system should be accomplished with the interests of recipients ranking of paramount importance.
- Private sector competition for the business of handling Federal payments should be maximized.
- All recipients, and especially those recipients having special needs, the elderly; individuals with physical, mental, educational or language barriers; those living in remote or rural communities, should not be disadvantaged by the transition to electronic payments.
- The EFT 99 program is an opportunity, to the maximum extent possible, to bring into the mainstream of our financial system those millions of Federal payment recipients who currently do not have bank accounts.

Putting the interests of recipients first demands that the consumer be provided a choice: *ETA*^{SM} or other available EFT options. Let each individual decide whether one particular EFT vehicle or, for that matter, even a paper check, meets his or her needs. Consumer choice maximizes private sector competition with consumer demand the ultimate indicator. For special needs recipients particularly, the DDP product provides an easy and convenient transition to EFT. The DDP Check provides a tangible evidence of deposit and payment in a familiar form. The recipient receives their funds at neighborhoods outlets as in the past, rather than switch to a new bank or adjust to ATM access. In the end, the DDP program, as does the *ETA*^{SM}, offers the unbanked a key to enter our financial mainstream. Where and how far they go from there is their decision.

<u>Issues for Comment</u>
The ANPRM raises a number of specific issues, to which we offer the following comments:

- *Should Treasury regulate or prohibit arrangements between financial institutions and payment service providers in which electronic federal payments are deposited into a recipient's non-ETA*^{SM} *account at a financial institution but made available to the recipient through a payment service provider?*

Prohibition of payment service providers subverts stated Treasury policy by denying a vital and effective form of private sector competition. Restricting EFT access solely to *ETA*^{SM} accounts denies the unbanked the freedom to make choices based on their own individual preferences. We favor regulation in the form of enhanced disclosure obligations. We would also support the establishment of minimum standards requirements (such as Federal deposit insurance) so long as those requirements do not limit consumer choice and provide assurances that consumer protections are in place. For example, many recipients do not want ATM access. Therefore, in defining "account access" to include ATM access, the requirement should provide the recipient that disbursement option; not demand that he or she automatically receive an ATM card.

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- *Do such arrangements deny the recipient either: (a) an account at a financial institution, (b) access to such account, (c) access at a reasonable cost. or (d) the same consumer protections with respect to the account as other account holders at the same institution?*

We answer "no" to each of the above. In fact, such arrangements should provide the recipient all that he or she seeks: a federally-insured account in which to receive EFT deposits; immediate access to all of the deposits (maintenance of a minimum balance not required); convenient access to such account, as desired (check vs. ATM); and fair disclosure regarding cost and consumer protections.

- *Should all payment service providers be subject to regulation. or only a particular subset, and if only a subset, what is the basis for such distinction?*

Fair competition demands that all payment service providers be treated equally. We cannot offer any logic or justification for defining a particular subset of payment service providers. We further contend that it would be unfair to treat the various payment service providers differently.

- *What other comments may be offered with regard to the nature of any regulation that may be appropriate for payment service provider arrangements, in general?*

The advent of the payment service provider is simply one private sector solution to the Treasury EFT initiative. Already, numerous banks have supported this approach by entering into their own payment service provider relationship. In fact, we suggest that Treasury reconsider permitting banks to partner with payment service providers to promote the widespread use of the *ETA*℠ as well. Permitting such arrangements would serve to consolidate both marketing and transaction processing costs and thereby reduce retail pricing or government subsidy requirements. The general prohibition of these arrangements would impair the delivery of benefit payments to thousands of current recipients.

Thank you for the opportunity to comment on the ANPRM. If you have any questions, or would like additional information about any of the points addressed in this letter, please contact the undersigned.

Respectfully submitted,

Barry J. Kessler
President

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